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his acquiring ancillary letters of administration in the *locus fori*, nor upon his being appointed by the court of the *locus delicti*, but simply upon the court's having jurisdiction over the person of the defendant as required by due process.

Let us turn now to the erroneous theories and the effects produced thereby. In some jurisdictions it is held that the statutes under consideration do not create a new cause of action, but merely permit a survival to the personal representative of a right which had accrued to his decedent.⁹ He must therefore bring suit in his representative capacity and is subject to the rule requiring him to take out ancillary letters in case the venue is not laid in the jurisdiction of the domicile.¹⁰ A further limitation is placed upon the statutory right of action by a singularly narrow interpretation of the term "personal representative." The recent case of *Battese v. Union Pacific Ry. Co.*¹¹ denies that a domiciliary administrator is within this term for purposes of suit under a foreign statute, apparently confining the right of action to an appointee of the *locus delicti*.¹² A combination of these two theories produces the following undesirable results: (1) Assuming that the defendant can be served with process neither at the domicile of the decedent nor in the jurisdiction where the death occurred, ancillary letters of administration must be secured from both the *locus delicti* and the *locus fori*. (2) As the right of action is not for the benefit of the estate, the grant of letters of administration may be denied in a jurisdiction where the decedent left no assets.¹³ (3) Where conflicting interpretations are placed on the term "personal representative," *quaere* as to the person in whom is vested the right of action. The construction of a statute of any jurisdiction is for its own courts.¹⁴ However, in the usual case involving the present considerations, a court is called on to construe a foreign statute which has not been interpreted by the court of the jurisdiction of its enactment. The most that can be derived from such a construction is an implied assent that the local statute be similarly construed by foreign tribunals.¹⁵

RECENT CASES

CHOSES IN ACTION — RIGHTS AND LIABILITIES OF ASSIGNEE — CONTRACT RUNNING WITH A BUSINESS. — A telegraph company agreed to construct and maintain a telegraph line along the right of way of a railroad, as part of the railroad system. The railroad company became bankrupt, and the property

⁹ *Bellamy v. Whitsell*, 123 Mo. App. 610, 100 S. W. 514 (1907); *St. Louis, etc. Ry. Co. v. McNamare*, 91 Ark. 515, 122 S. W. 102 (1909); *Louisville Ry. Co. v. Raymond's Adm'r*, 135 Ky. 738, 123 S. W. 281 (1909).

¹⁰ *Brooks v. Southern Pac. Ry. Co.*, 148 Fed. 986 (1906).

¹¹ 170 Pac. 811 (Kan.) (1918). See Recent Cases, page 1164.

¹² *Hall v. Southern Ry. Co.*, 146 N. C. 345, 59 S. E. 879 (1907); *Louisville, etc. Ry. Co. v. Brantley's Adm'r*, 96 Ky. 297, 28 S. W. 477 (1894).

¹³ *Perry v. St. Joseph Ry. Co.*, 29 Kan. 420 (1883); *Jeffersonville Ry. Co. v. Swayne's Adm'r*, 26 Ind. 477 (1866). *Contra*, *Hutchins v. St. Paul, etc. Ry. Co.*, 44 Minn. 5, 46 N. W. 79 (1890); *Findlay v. Chicago, etc. Ry. Co.*, 106 Mich. 700, 64 N. W. 732 (1895). See 1 *WOERNER, AMERICAN LAW OF ADMINISTRATION* (2 ed.), § 205.

¹⁴ See 2 *SUTHERLAND STATUTORY CONSTRUCTION* (2 ed.), § 319.

¹⁵ See 23 *HARV. L. REV.* 554.

was sold on foreclosure to the plaintiff and all contracts assigned to him. Upon notice that the telegraph company considered the contract at an end, the plaintiff filed a bill to compel performance. *Held*, that the defendant was still bound by the contract. *Detroit, etc. R. Co. v. Western Union Tel. Co.*, 166 N. W. 494 (Mich.).

It is fundamental that an assignor cannot, by assigning a contract, relieve himself from liability thereunder. *Ferguson v. McBean*, 91 Cal. 63, 27 Pac. 518; *Springer v. De Wolf*, 194 Ill. 218, 62 N. E. 542. Indeed, unless the parties make a novation, or, in jurisdictions allowing a beneficiary to recover, the assignee expressly agrees to perform for the benefit of the original promisee, the latter's only relief is against the assignor. *Lisenby v. Newton*, 120 Cal. 571, 52 Pac. 813. See 2 ELLIOTT, CONTRACTS, § 1456. If, then, the assignor becomes insolvent or goes out of existence, the promisee's security for the performance of the promisor is so jeopardized or destroyed that he should be warranted in repudiating the contract. *Central Trust Co. v. Chicago Auditorium Co.*, 240 U. S. 581. Hence, although the assignee in the principal case assumed liability under the contract it would follow, on ordinary contract principles, that the defendant cannot be forced to perform, for a novation cannot be thrust upon him against his consent. Courts of equity have, however, regarded contracts made for the benefit of a business as passing with the business to the purchaser thereof and enforceable by him, even without express assignment, just as a contract for the benefit of land runs in equity with the land. *Abergarg Brewing Co. v. Holmes*, [1900] 1 Ch. 188. Mutuality of performance can be secured by a conditional decree. *Courage & Co. v. Carpenter*, [1910] 1 Ch. 262. The difficulty that equity is enforcing continuous performance is offset by the consideration of the great hardship which would otherwise result to the plaintiff, and the public interest in carrying out the contract. *Dominion Iron & Steel Co. v. Dominion Coal Co.*, 43 Nova Scotia, 77; *Union Pac. R. Co. v. Chicago, etc. R. Co.*, 163 U. S. 564.

CONFLICT OF LAWS — OBLIGATIONS *EX DELICTO*: CREATION AND ENFORCEMENT — STATUTE GIVING PERSONAL REPRESENTATIVE RIGHT TO SUE FOR DEATH BY WRONGFUL ACT. — Plaintiff's intestate was killed by defendant's negligence in Nebraska, where a statute gives the personal representative a right of action for death by wrongful act. Plaintiff, appointed administrator by the Kansas court, sues in Kansas to recover under the Nebraska statute. *Held*, that the action cannot be maintained, as "personal representative" refers to one appointed by the state whose statute created the right of action. *Battese v. Union Pacific Ry. Co.*, 170 Pac. 811 (Kan.).

For a discussion of this case see Notes, page 116.

CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONS — STATE JURISDICTION OVER FEDERAL LANDS. — The defendant was convicted in an Idaho court for violation of a statute of Idaho prohibiting the grazing of sheep under certain circumstances. The offense was committed on United States government lands in the state in which grazing was permitted by the federal authorities. *Held*, that the conviction should be affirmed. *Omaechevarria v. Idaho*, 38 Sup. Ct. Rep. 323.

Where the federal government succeeds to the title of land within a state with the consent of the state legislature the federal jurisdiction over the land is exclusive of all state authority. U. S. CONSTITUTION, Art. I, § 8, clause 17; *Commonwealth v. Clary*, 8 Mass. 72. Even here it has been held that state courts have jurisdiction of a local action between private parties with respect to land ceded to the United States until Congress has made new regulations touching the administration of civil cases arising therein. *Barrett v. Palmer*, 135 N. Y. 336, 31 N. E. 1017. But over land acquired by the federal govern-